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BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **FLORIBEL BRIOSOS DIAZ** **306 Deanne Lane** **Daly City, CA 94014** **Registered Nurse License No. 450436** Respondent.	Case No. 2010 - 606 **ACCUSATION**

Complainant alleges:

PARTIES

1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs.

2. On or about March 31, 1990, the Board of Registered Nursing issued Registered Nurse License Number 450436 to Floribel Briosos Diaz ("Respondent"). The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on April 30, 2012, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY AND REGULATORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

. . .

7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide nursing care as required or failure to provide care or to exercise ordinary precaution in a single situation which the nurse knew, or should have known, could have jeopardized the client's health or life."

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8. California Code of Regulations, title 16, section 1443, states:

"As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the failure to exercise that degree of learning, skill, care and experience ordinarily possessed and exercised by a competent registered nurse as described in Section 1443.5."

COST RECOVERY

9. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

STATEMENT OF RELEVANT FACTS

10. On September 8, 2008, patient N.Y.[1] was admitted to San Francisco General Hospital Medical Center ("SFGH"), in San Francisco. She had a large pelvic tumor consistent with ovarian cancer and had been recently diagnosed with colon cancer.

11. Surgery began at 1:40 p.m. on September 8, 2008. N.Y. underwent a total abdominal hysterectomy with removal of her fallopian tubes, ovaries and a large portion of her intestinal tract. N.Y.'s surgery was complicated by a massive intraoperative hemorrhage. Surgery was concluded at 10:05 p.m., lasting 8 hours and 25 minutes.

12. Respondent at all relevant times was employed as a registered nurse at SFGH. On September 8, 2008, at 7:55 p.m., she was assigned as the scrub nurse in the operating room for N.Y. She remained the scrub nurse until N.Y. left the operating room at 10:05 p.m.

13. Respondent affirmed with the circulating operative room nurse that at the time the surgeons began closing and prior to the completion of the closing, that the counts were correct for all "SHARPS/NEEDLES/SPONGES AND INSTRUMENTS." One of the type of surgical sponges used during N.Y.'s operation is known as a "lap sponge" that has a radiopaque tag such that if retained, it can be identified by x-ray.

[1] Patient initials are used to protect the patient's privacy. Full names will be disclosed to Respondent pursuant to a request for discovery.

14. N.Y. returned to SFGH on December 12, 2008, complaining of a foul smelling vaginal discharge. A pelvic examination revealed the presence of a foreign body adhering to her wall of her vagina. It was removed and sent to pathology for identification. The removed object was identified to be a lap sponge with a radiopaque tag.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence – Incorrect Sponge Count)

15. Respondent is subject to disciplinary action for gross negligence under section Code section 2761, subdivision (a)(1) in that she failed to accurately complete the final lap sponge count, did not identify the loss of a lap sponge and failed to notify the surgeons of the incorrect sponge count as set forth in paragraphs 10 through 14, above. Respondent's gross negligence subjected patient N.Y. to pain, discomfort and with risks attendant in having a retained lap sponge as set forth in paragraphs 10 through 14, above.

SECOND CAUSE FOR DISCIPLINE

(Incompetence – Incorrect Sponge Count)

16. Respondent is subject to disciplinary action for incompetence under section Code section 2761, subdivision (a)(1) in that she failed to accurately complete the final lap sponge count, did not identify the loss of a lap sponge and failed to notify the attending surgeon of the incorrect sponge count as set forth in paragraphs 10 through 14, above.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 450436, issued to Floribel Briosos Diaz.

2. Ordering Floribel Briosos Diaz to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3.

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3. Taking such other and further action as deemed necessary and proper.

DATED: 5/25/10

LOUISE R. BAILEY, M.ED., RN
Interim Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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